

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1102 OF 2007.

Wadhera Publication.	... Petitioner.
Versus.	
Life Insurance Corporation of India and others.	... Respondents.

Shri Jayakar i/by M/s.Jayakars for the Petitioner.

Shri Y.V.Sanglikar for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 12th June, 2007.

P.C.:

1. By consent of the learned Counsel appearing for the parties, the petition is taken up for final hearing at the stage of admission. The 2nd and 3rd Respondents are not necessary parties for considering the prayers made in this petition.

2. By a judgment and order dated 2nd December 2005, the learned Principal Judge of the City Civil Court passed an order of remand. He directed the Estate Officer to hold an enquiry as regards the recovery of damages from the Petitioner under section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The learned Judge directed the Estate Officer to pass an appropriate order after giving an opportunity to both the contesting parties of being

heard. An application was made by the present Petitioner (Opponent No.3) before the Estate Officer in the pending enquiry claiming various reliefs. The first prayer was for stay of the further proceedings of the case. The second prayer made in the alternative was for a direction to the 1st Respondent to lead the evidence first.

3. The 1st Respondent/Applicant before the Estate Officer filed a reply to the said Application. In paragraph 2 of the said reply, the 1st Respondent has stated thus:

"2. The matter of evaluation of damages is remanded back to the Hon'ble E.O. Possession of the premises is with the Applicants. The Applicants have filed a valuation report in support of their claim for damages. The Applicants have made the valuer available for cross-examination."

4. By the order impugned in this petition passed on the said Application filed by the Petitioner, the Estate Officer directed the Applicant to file evidence in rebuttal of the 1st Respondent's claim for damages as mentioned in the show-cause notice. A further order was noted in the Roznama of the case directing the Applicant

to lead evidence if the Applicant was desirous of leading evidence. The impugned order records the submission of the Petitioner that the only prayer clause (c) of the Application dated 3rd May 2006 was pressed. The Estate Officer also noted the submission made by the 1st Respondent that if the Petitioner desires to cross examine the valuer whose valuation report has been submitted by the 1st Respondent, he will be available for cross examination by the Petitioner.

5. In short, the 1st Respondent is relying upon the report of the valuer in support of its claim before the Estate Officer. Even in the reply filed to the application made by the Petitioner, the 1st Respondent has offered to keep the valuer present for cross examination by the Advocate for the Petitioner. Without noticing the said statement made by the 1st Respondent, the Estate Officer directed the Petitioner to lead evidence in rebuttal of the claim made by the 1st Respondent.

6. The learned Counsel for the 1st Respondent on instructions has stated that the concerned valuer will be available after 19th July 2007 and the 1st Respondent will keep the said valuer present so that the Petitioner can cross-examine the said valuer.

7. In view of the aforesaid position, the impugned order will have to be quashed and set aside and appropriate directions will have to be issued.

8. Hence the following order is passed:

- (i) The 1st Respondent will keep the expert valuer present before the Estate Officer on 30th July 2007 at 11.00 a.m. On that day, the Petitioner or the Advocate appointed by the Petitioner will be free to cross examine the said valuer.
- (ii) The Petitioner will not seek adjournment on any unreasonable ground.
- (iii) After cross-examining the valuer appointed by the 1st Respondent, the Petitioner will be free to lead further evidence in the matter.
- (iv) The petition is disposed of accordingly.

Judge.